



1775 PENNSYLVANIA AVENUE NW, SUITE 375
WASHINGTON, DC 20006
(202) 899-4100 MAIN (612) 336-9100 FAX

JAMES R MARTIN
jmartin@zelle.com
(202) 899-4101

October 22, 2019

VIA ECF and Facsimile

The Honorable Naomi Reice Buchwald
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

RE: *In re LIBOR-Based Financial Instruments Antitrust Litig.*,
Case No. 11-md-2262 (S.D.N.Y.)

Dear Judge Buchwald:

I write on behalf of Plaintiff the Federal Deposit Insurance Corporation as Receiver for 39 Closed Banks ("FDIC-R") to advise the Court that, consistent with its suggestion at the July 29, 2019 telephonic hearing on certain Defendants' Pre-Motion Letter, the FDIC-R today filed a Notice of Voluntary Dismissal of contract-based claims asserted against Defendants Credit Suisse International ("CSI"), HSBC Bank USA, N.A. ("HSBC"), Royal Bank of Canada ("RBC"), and Portigon AG (f/k/a WestLB AG) ("Portigon") arising from certain identified master swap agreements. *See* Transcript of Telephone Conference at 16:15-20.¹ The FDIC-R reserves all rights with regard to tort and antitrust claims alleged against these (and all other) Defendants, subject to the Court's prior rulings.

The FDIC-R believes the dismissal of these contract-based claims resolves item I.A. in Defendants' June 19, 2019 Pre-Motion Letter with regard to Defendants HSBC, RBC, and Portigon. *See* June 2019 Pre-Motion Letter; Transcript at 2:12-17:4. With regard to other contract-based claims asserted against Defendants CSI, Barclays Bank PLC, and NatWest Markets plc (f/k/a The Royal Bank of Scotland plc), the FDIC-R has shared data evidencing actionable swap transactions with those Defendants and intends to pursue claims arising from those transactions. *See* Transcript at 20:5-23:18.

With the filing of today's dismissals, the FDIC-R believes that the only issue raised in Defendants' June 27th Pre-Motion letter that remains unresolved involves CSI's assertion that certain language in the ISDA Master Agreement between Closed Bank Westernbank Puerto Rico

¹ The Court scheduled the Telephonic Hearing to address certain issues raised by Defendants in their pre-motion letter dated June 27, 2019. ECF No. 2890 ("June 2019 Pre-Motion Letter").

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and Credit Suisse First Boston International, predecessor-in-interest to Defendant CSI, was insufficient to establish personal jurisdiction over CSI for the FDIC-R's claims arising under that contract.² See June 2019 Pre-Motion Letter at I.B. The Court suggested "very short briefing" on that issue (5-7) pages. *Id.* at 23:19-24:2. The FDIC-R is prepared to respond to any such motion within two weeks of filing.

Respectfully,

/s/ James R. Martin
James R. Martin

cc: All Counsel (via ECF)

² With regard to the question of personal jurisdiction raised by CSI with regard to Closed Banks Washington Mutual Bank and Superior Bank, Transcript at 24:3-28:10, CSI produced additional pages from one of the two Master Swap Agreements. Following that disclosure and discussions with CSI's counsel, the FDIC-R advised CSI that it will not pursue those contract-based claims for logistical and practical reasons. The Notice of Dismissal includes those claims.